

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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|---------------------------------------|---|----------------------|
| JENNIFER L. MILLER, <i>et. al.</i> , |) | No. 5:20-cv-1743-JRA |
| |) | |
| <i>Plaintiffs,</i> |) | Judge John R. Adams |
| |) | |
| v. |) | |
| |) | |
| MICHAEL J. ANDERSON, <i>et. al.</i> , |) | |
| |) | |
| <i>Defendants,</i> |) | |
| |) | |
| and |) | |
| |) | |
| FIRSTENERGY CORP., |) | |
| |) | |
| <i>Nominal Defendant.</i> |) | |
| |) | |
| |) | |
| |) | |

**RESPONSE OF THE SPECIAL LITIGATION COMMITTEE OF THE BOARD OF
DIRECTORS OF NOMINAL DEFENDANT FIRSTENERGY CORP.
TO THE COURT’S ORDER OF JUNE 2, 2022**

The Special Litigation Committee (“SLC”) of the Board of Directors of FirstEnergy Corp. (“FirstEnergy” or the “Company”), by and through their undersigned counsel, submit this response to the Court’s June 2, 2022 Order, Dkt. #316, ordering the parties to show cause why the court should not “appoint counsel that will fully and fairly litigate this matter.” *Id.*

The SLC respectfully submits that no new counsel should be appointed in light of the vigorously negotiated settlement that is currently subject to approval proceedings in the Southern District of Ohio. *See Emps. Ret. Sys. of the City of St. Louis v. Jones, et al.*, Dkt. #176 (S.D.

Ohio May 9, 2022). As Your Honor previously recognized, the derivative claims asserted on the Company's behalf in that action are "substantively identical" to those asserted here. *See* Dkt. #117, at 1. Moreover, the Stipulation of Settlement included the agreement of all parties to refrain from further prosecution of this Action during the settlement approval process currently underway in the Southern District Action. *See Emps. Ret. Sys. of the City of St. Louis v. Jones, et al.*, Dkt #170-3, at ¶ 8 (S.D. Ohio Mar. 11, 2022).

The proposed settlement would likely be the largest in the history of derivative actions in Ohio, and one of the largest to date anywhere in the country. Under these circumstances, the judgment of the SLC and a highly-regarded group of Plaintiffs' counsel that the settlement serves the Company's best interests is entitled to deference, and there is no reason to appoint new counsel or mandate further prosecution of this Action during the pendency of settlement approval hearings in the Southern District Action.

Dated: June 10, 2022

OF COUNSEL:

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2022, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing, which will notify all counsel of record.

/s/ Susan Gittes
Susan Gittes, *Admitted Pro Hac Vice*

*Attorney for the Special Litigation
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Nominal Defendant FirstEnergy Corp.*